IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 4428 of 2004

DEVI BAI
V/S
B.O.R. AJMER & ORS.

Mr. VIJAY AGGARWAL, for the appellant / petitioner

Date of Order : 11.10.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

By the impugned order, Annexure-5, the learned Board of Revenue has set aside the order of the learned S.D.O. Dated 19.11.97 (18.11.97), whereby the parties were directed to produce evidence, and has directed the learned trial Court to decide the matter on the basis of the material on record after giving opportunity of hearing to the learned counsel, and expeditiously.

It is contended by the learned counsel for the petitioner on the strength of earlier order of the Board of Revenue dated 22.9.97, being Annexure-3, that the learned Board of Revenue had found that there are two sets of issues available on record. One being 7 issues' and the other being the set of 11 issues, and the Board of Revenue had found that it is not clear, as to which set of issues was struck, and explained, while the ten issues framed by the learned trial Court are in conformity with the provisions of Order 14 Rule 1(5), but they have not been decided, and therefore, the judgment was found to be nullity. According to the learned counsel, in that view of the matter, there was nothing wrong on the part of the learned S.D.O. in allowing the parties to lead evidence, and there was no occasion for the Board of Revenue to interfere in that order.

I have considered the submissions, and have gone thorough the original order of the learned S.D.O. deciding the suit, being Annexure-1, so also the order of the Board of Revenue, being Annexure-3, and the

orders, Annexure-4 and 5.

A look at the order, Annexure-1 shows that, thereby the suit was decided treating as if seven issues were framed, and the learned Board of Revenue in para 3 has discussed in detail, and has ponded on the question “it was, therefore, necessary for us, first to look into whether seven issues were framed by the learned trial court or whether ten issues were framed by it.” Then after looking closely on two papers, containing the two sets of issues, the signatures available thereon, and the attending circumstances comprising of the ordersheet dated 23.9.85, whereby the issue no.4 was found to be legal issue, and the case was fixed on 30.9.85 for arguments on legal issue, by recapitulating issue no.4, found that this issue no.4 does not find place on the paper containing seven issues. Interalia, with these findings, the learned Board of Revenue recorded the following positive finding:

“It is thus clear that the court had framed ten issues and the judgment was to be given on these ten issues.”

It is, in this background, that in para 4, the learned Board of Revenue observed that Order 20 Rule 5 requires a court to state its findings or decision with the reason therefor upon each separate issue in suits in which issues have been framed, and then has noticed that in the present case, the ten issues were framed by the learned trial court in conformity with the provisions of Order 14 Rule 1(5), and the judgment was to be pronounced on each of the ten issues, which the learned trial Court has failed to do. With these findings, the judgment of the learned trial Court was found to be nullity, and was set aside, and significantly, in this very para, the matter was remanded to the learned trial Court, “**to pass a finding issuewise**”. It is, this reasoning, logic, and observation on the basis of which, in para 5 and 6 setting aside both the orders of the S.D.O., and the Revenue Appellate Authority, and the matter was remanded back to the S.D.O. to take appropriate action in view of the observations made above.

In my opinion, this makes it clear that the direction of remand was for passing the fresh order giving findings issuewise, and deciding all the ten issues. The judgment never contemplated a trial denovo, more particularly when, it was nobody's case all through, that any of the parties did not want to lead evidence, or they did not get adequate

opportunity to lead evidence in the matter, simply because the matter was remanded back to the learned trial Court, that by itself cannot entitle the parties to get fresh opportunity of leading evidence. In that view of the matter, I do not find any error in the order, Annexure-5.

The writ petition is, therefore, dismissed summarily. The learned trial Court is directed to decide the suit most expeditiously.

(N P GUPTA),J.

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